US Army Corps
of Engineers
Fort Worth District

# Public Notice

Applicant: Direct Development

Permit Application No.: 200600372

Date: June 21, 2007

The purpose of this public notice is to inform you of a proposal for work in which you might be interested. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in this process.

**Regulatory Program**

Since its early history, the U.S. Army Corps of Engineers has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the U.S. Army Corps of Engineers Regulatory Program.

**Section 10**

The U.S. Army Corps of Engineers is directed by Congress under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate *all work or structures in or affecting the course, condition or capacity of navigable waters of the United States*. The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

**Section 404**

The U.S. Army Corps of Engineers is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the *discharge of dredged and fill material into all waters of the United States, including wetlands*. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

**Contact**

Name: Brent J. Jasper

Phone Number: (817) 886-1733

JOINT PUBLIC NOTICE

U.S. ARMY CORPS OF ENGINEERS, FORT WORTH DISTRICT

AND

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

SUBJECT: Application for a Department of the Army Permit under Section 404 of the Clean Water Act (CWA) and for water quality certification under Section 401 of the CWA to discharge dredged and fill material into waters of the United States associated with the proposed construction of Creekside Square Development, a retail/commercial development and associated parking facilities in San Marcos, Hays County, Texas.

APPLICANT: Direct Development
Mr. Jon Andrus
301 Congress Avenue
Austin, Texas 78701

APPLICATION NUMBER: 200600372

DATE ISSUED: June 21, 2007

LOCATION: The proposed retail/commercial development would be located just west of Interstate 35 (IH 35) and north of McCarty Lane along the upper reaches of an unnamed tributary of Cottonwood Creek in San Marcos, Hays County, Texas. The proposed project would be located approximately at UTM coordinates 599596 East and 3302218 North (Zone 14) on the San Marcos South, Texas 7.5-minute USGS quadrangle map in the USGS Hydrologic Unit 12100203.

OTHER AGENCY AUTHORIZATIONS: State Water Quality Certification, Conditional Letter of Map Revision

PROJECT DESCRIPTION: The proposed project is a commercial and retail development on a 113-acre site located north of the intersection of IH 35 and McCarty Lane, in San Marcos, Hays County, Texas (Sheets 1- 7 of 7). The project includes commercial and retail buildings, associated parking, stormwater quality treatment facilities, and channel modifications to an unnamed ephemeral tributary of Cottonwood Creek. The proposed project would involve modification of the existing stream channel along with construction of City of San Marcos required regional stormwater detention and water quality improvements. The purpose of the proposed channel modifications is to facilitate development on the subject site as well as provide stormwater detention, water quality treatment, and conveyance for the upstream watershed. The total stormwater detention and water quality improvements required by the City of San Marcos include two (2) off-channel wet ponds and construction of a channel to provide adequate

detention, water quality treatment, and conveyance to serve the developed watershed, including the subject development. The channel and stormwater treatment facilities are intended to be regional in application.

The project site and surrounding area are generally characterized as undeveloped farm and ranch land, although commercial development is rapidly increasing all over the area. Waters of the United States within the project area consist of 3,300 linear (2.90 acre) feet of ephemeral, low gradient, braided depressions and swales along the unnamed tributary of Cottonwood Branch. Located within the braided depressions and swales are 0.42 acre of open-water intermittent pools and a 0.40 acre on-channel stock pond that are also considered waters of the United States. Waters of the United States within the project area total 3.72 acres. Wetland vegetation is found along most of extent of the unnamed tributary of Cottonwood Creek that includes sedges (*Carex sp.*), spikerush (*Eleocharis montevidensis*), and bushy bluestem (*Andropogon glomeratus*) with occasional black willow (*Salix nigra*), hackberry (*Celtis laevigata*), and cedar elm (*Ulmus crassifolia*).

The two off-channel wet ponds are designed according to Texas Commission on Environmental Quality (TCEQ) guidelines for water quality treatment. Temporary detention storage would provided above the permanent pool level of the pond. The constructed creek channel would have a bottom width that is 200 feet. The top-of-bank width would be variable and somewhat mimic natural conditions on the site with a 3:1 slope. The meandering, low-flow trickle channel would be approximately 5 feet wide, and incised approximately 1 to 2 feet with 1:1 sideslopes. The low-flow trickle channel would meander back and forth within the channel bottom area to within 10 feet of the toe of slope on each side of the channel over the approximately 1,600 linear feet of reconstructed channel.

Approximately 6,000 cubic yards of dredged and fill material would be discharged into waters of the United States for construction of the proposed project. The project would result in the loss of approximately 3,300 linear feet (2.90 acre) of ephemeral, low gradient, braided herbaceous wetland depressions and swales, 0.42 acre of open-water intermittent pools, and a 0.40 acre on-channel stock pond totaling 3.72 acres of water of the United States. The 3.72 acres of waters of the United States would be filled for construction of commercial and retail buildings, parking lot, channel improvements, and on-site stormwater treatment wet ponds. Fill material would originate from clean construction spoils from development on the adjacent uplands. A select clay liner for the wet ponds would constructed utilizing material from a commercial clay pit east of San Marcos.

The applicant has identified alternatives to the proposed action as no action, reduced site development, and alternate location. The no-action alternative would involve no development on the site that would necessitate 404 permit action. Due to stringent floodplain management requirements recently adopted by the City of San Marcos, any development on the site would necessitate some level of stormwater management action and the City of San Marcos is striving to implement regional approaches to stormwater management to retroactively accommodate

historical land developments built prior to the more recent stormwater management guidelines. Therefore, modification of the tributary would be likely regardless of the level of development on the subject tract. Additionally, this alternative would not allow the landowner to realize the financial benefits of the development of the subject site that it believes appropriate. The reduced site development alternative would be similar to the no-action in that the requirement for regional stormwater management would necessitate modifications to the tributary and financial benefits of developing this IH 35 frontage property would not be realized. The alternate location alternative assumes the applicant could divest the subject property and purchase another similarly situated and sized property for the planned development. IH 35 frontage property is at a premium and the area of the proposed development is currently under intense commercial and retail development. Anyone purchasing the subject site would need to develop it in a similar manner as proposed to realize financial benefits due to the high land costs. Finding another similarly situated IH 35 frontage tract of similar size would be difficult in today's real estate market and the likelihood for a similar tract having waterways of having to make similar modifications to another waterway would be high to facilitate the local stormwater management requirements.

The applicant states that it has attempted to design the project in a manner that minimizes and avoids adverse impacts to waters of the United States; however, the requirement to provide regional stormwater management facilities and detention capacity along the tributary necessitates modification of most of the on-site tributary system. The applicant has provided a mitigation plan that includes enhancements to the modified tributary. The riparian enhancement zone would be composed of a channel with a saw-cut, sinuous low-flow trickle channel, upper floodplain sideslopes, open water wetland pools, and upland riparian buffer area totaling 9.19 acres. The modified channel area would be planted with native grasses and wildflowers, with trees and shrubs on the upper riparian bank area. Several small pools would be created in the bottom of the flood channel that would have wetland characteristics similar the existing braided swales and pools totaling 1.14 acres. This effort would also provide 1,615 linear feet of trickle channel (waters of the US) within the enhanced flood channel and adjacent upper riparian zone. The intent of the mitigative effort is to recreate a functional riparian and wetland system that would continue to provide ecological functions such as water quality buffering, wildlife habitat, and flood flow conveyance. Water quality treatment is the primary design feature of the off-channel wet ponds, but additional water quality treatment would occur within the native grasses and wetland depressions in the flood channel. The channel modifications are designed specifically to provide efficient flood storage and flow conveyance. The enhancements to the stream corridor with native vegetation are intended to restore wildlife habitat functions. The enhanced stream corridor would be protected in perpetuity through the use of a deed restriction.

PUBLIC INTEREST REVIEW FACTORS: This application will be reviewed in accordance with 33 CFR 320-331, the Regulatory Program of the U. S. Army Corps of Engineers (USACE), and other pertinent laws, regulations, and executive orders. Our evaluation will also follow the guidelines published by the U. S. Environmental Protection Agency pursuant to Section 404(b)(1) of the CWA. The decision whether to issue a permit will be based on an evaluation of the probable impact, including cumulative impact, of the proposed activity on the public interest.

That decision will reflect the national concerns for both protection and utilization of important resources. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered, including its cumulative effects. Among the factors addressed are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people.

The USACE is soliciting comments from the public; federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the USACE in determining whether to issue, issue with modifications, or conditions, or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

STATE WATER QUALITY CERTIFICATION: This project would result in a direct impact of greater than three acres of waters of the state or 1,500 linear feet of streams (or a combination of the two is above the threshold), and as such would not fulfill Tier I criteria for the project. Therefore, Texas Commission on Environmental Quality (TCEQ) certification is required. Concurrent with USACE processing of this Department of the Army application, the TCEQ is reviewing this application under Section 401 of the Clean Water Act, and Title 30, Texas Administrative Code Section 279.1 13 to determine if the work would comply with State water quality standards. By virtue of an agreement between the USACE and the TCEQ, this public notice is also issued for the purpose of advising all known interested persons that there is pending before the TCEQ a decision on water quality certification under such act. Any comments concerning this application may be submitted to the Texas Commission on Environmental Quality, 401 Coordinator, MSC-150, P.O. Box 13087, Austin, Texas 78711-3087. The public comment period extends 30 days from the date of publication of this notice. A copy of the public notice with a description of the work is made available for review in the TCEQ's Austin Office. The complete application may be reviewed in the USACE's office. The TCEQ may conduct a public hearing to consider all comments concerning water quality if requested in writing. A request for a public hearing must contain the following information: the name, mailing address, application number, or other recognizable reference to the application; a brief description of the interest of the requestor, or of persons represented by the requestor; and a brief description of how the application, if granted, would adversely affect such interest.

ENDANGERED AND THREATENED SPECIES: The USACE has reviewed the U.S. Fish and Wildlife Service's latest published version of endangered and threatened species to determine if any listed species may occur in the project area. The proposed project would be located in Hays County where the whooping crane (*Grus americana*), interior least tern (*Sterna antillarum*), bald eagle (*Haliaeetus leucocephalus*), piping plover (*Charadrius melodus*), black-capped vireo (*Vireo atricapillus*), golden-cheeked warbler (*Dendroica chrysoparia*), Texas blind salamander (*Eurycea rathbuni*), San Marcos salamander (*Eurycea nana*), Peck's cave amphipod (*Stygobromus {=Stygonectes} pecki*), Comal Springs dryopid beetle (*Stygoparnus comalensis*), Comal Springs riffle beetle (*Heterelmis comalensis*), Fountain darter (*Etheostoma fonticola*), San Marcos gambusia (*Gambusia georgei*), and Texas wild rice (*Zizaniopsis texana*) are known to occur or may occur as migrants. The whooping crane, interior least tern, golden-cheeked warbler, black-capped vireo, Texas blind salamander, Peck's Cave amphipod, Comal Springs dryopid beetle, Comal Springs riffle beetle, Fountain darter, San Marcos gambusia, and Texas wild rice are endangered species and the bald eagle, piping plover, and San Marcos salamander are threatened species. Our initial review indicates that the proposed work would have no effect on federally-listed endangered or threatened species.

NATIONAL REGISTER OF HISTORIC PLACES: The USACE has reviewed the latest complete published version of the National Register of Historic Places and found no listed properties to be in the project area. A cultural resources survey of the proposed development site was conducted by the applicant's consultant with negative findings and the Texas Historical Commission concurred that development of the proposed site would not affect any historic properties.

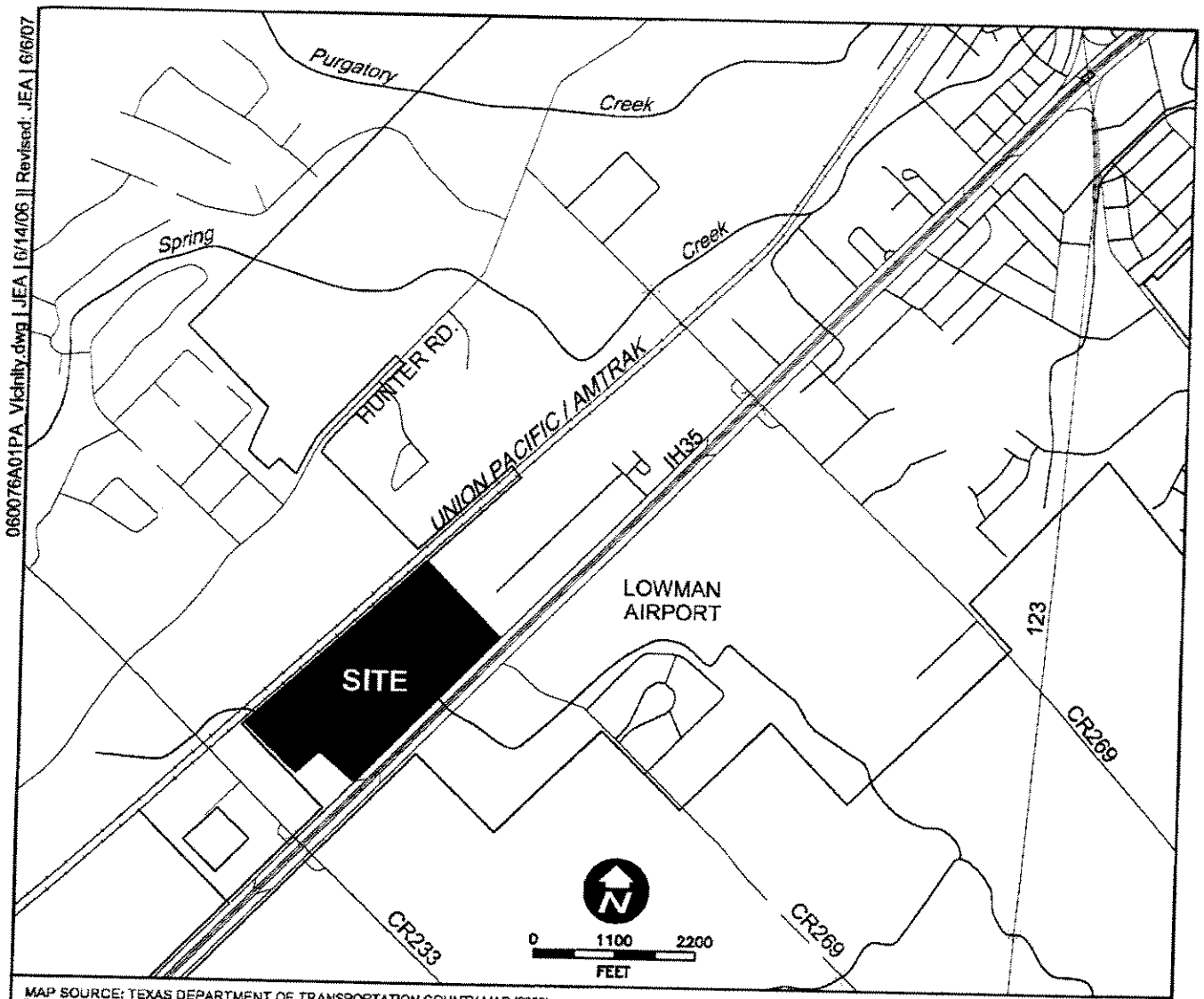
FLOODPLAIN MANAGEMENT: The USACE is sending a copy of this public notice to the local floodplain administrator. In accordance with 44 CFR part 60 (Flood Plain Management Regulations Criteria for Land Management and Use), the floodplain administrators of participating communities are required to review all proposed development to determine if a floodplain development permit is required and maintain records of such review.

SOLICITATION OF COMMENTS: The public notice is being distributed to all known interested persons in order to assist in developing fact upon which a decision by the USACE may be based. For accuracy and completeness of the record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition.

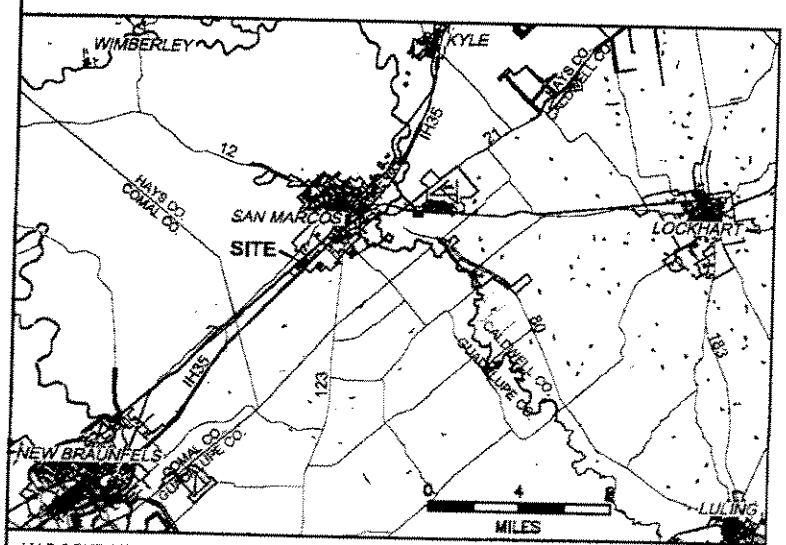
PUBLIC HEARING: Prior to the close of the comment period any person may make a written request for a public hearing setting forth the particular reasons for the request. The District Engineer will determine whether the issues raised are substantial and should be considered in his permit decision. If a public hearing is warranted, all known interested persons will be notified of the time, date, and location.

CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before July 20, 2007, which is the close of the comment period. Extensions of the comment period may be granted for valid reasons provided a written request is received by the limiting date. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to Mr. Brent Jasper; Regulatory Branch, CESWF PER R; U. S. Army Corps of Engineers; Post Office Box 17300; Fort Worth, Texas 76102 0300. You may visit the Regulatory Branch in Room 3A37 of the Federal Building at 819 Taylor Street in Fort Worth between 8:00 A.M. and 3:30 P.M., Monday through Friday. Telephone inquiries should be directed to (817) 886-1733. Please note that names and addresses of those who submit comments in response to this public notice may be made publicly available.

DISTRICT ENGINEER
FORT WORTH DISTRICT
CORPS OF ENGINEERS




MAP SOURCE: TEXAS DEPARTMENT OF TRANSPORTATION COUNTY MAP (2003)




MAP SOURCE: TEXAS DEPARTMENT OF TRANSPORTATION COUNTY MAP (2003)

**SHEET 1 OF 7**

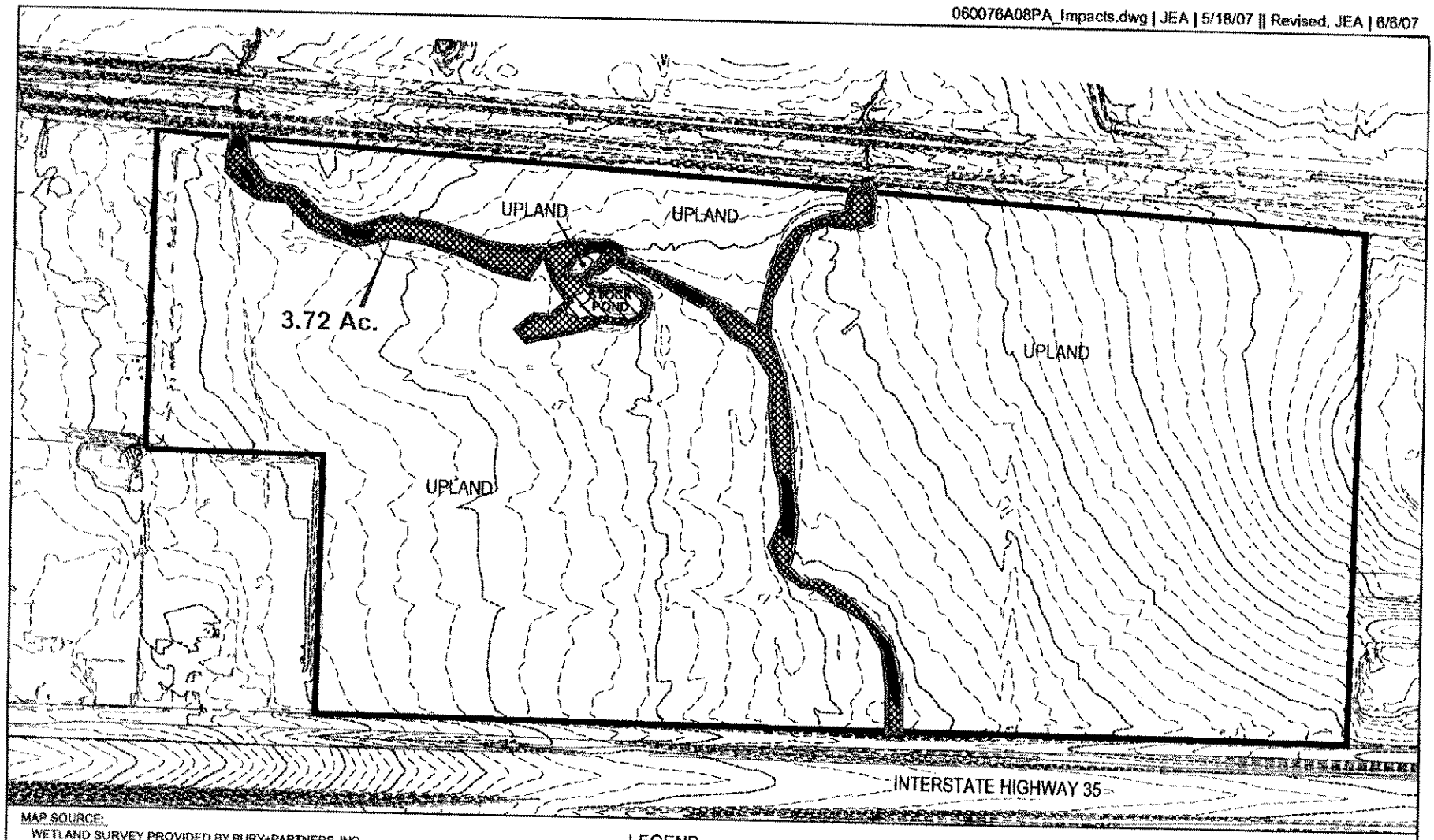
VICINITY MAP
CREEKSIDE SQUARE
IH 35 AND MCCARTY ROAD
SAN MARCOS, HAYS COUNTY, TEXAS
USACE PROJECT NO. 200600372 MAY 2007

Horizon
Environmental Services, Inc.

"Do Not Scale This Drawing"

*Do Not Scale This Drawing*

060076A08PA_Impacts.dwg | JEA | 5/18/07 || Revised: JEA | 6/6/07




MAP SOURCE:
WETLAND SURVEY PROVIDED BY BURY+PARTNERS, INC.
(JUNE 2006)

LEGEND

- SITE BOUNDARY
- OPEN WATER POOL ( 0.417 AC.)
- STOCK POND ( 0.404 AC.)
- WETLAND SWALE ( 2.899 AC.)

0 200 400
FEET

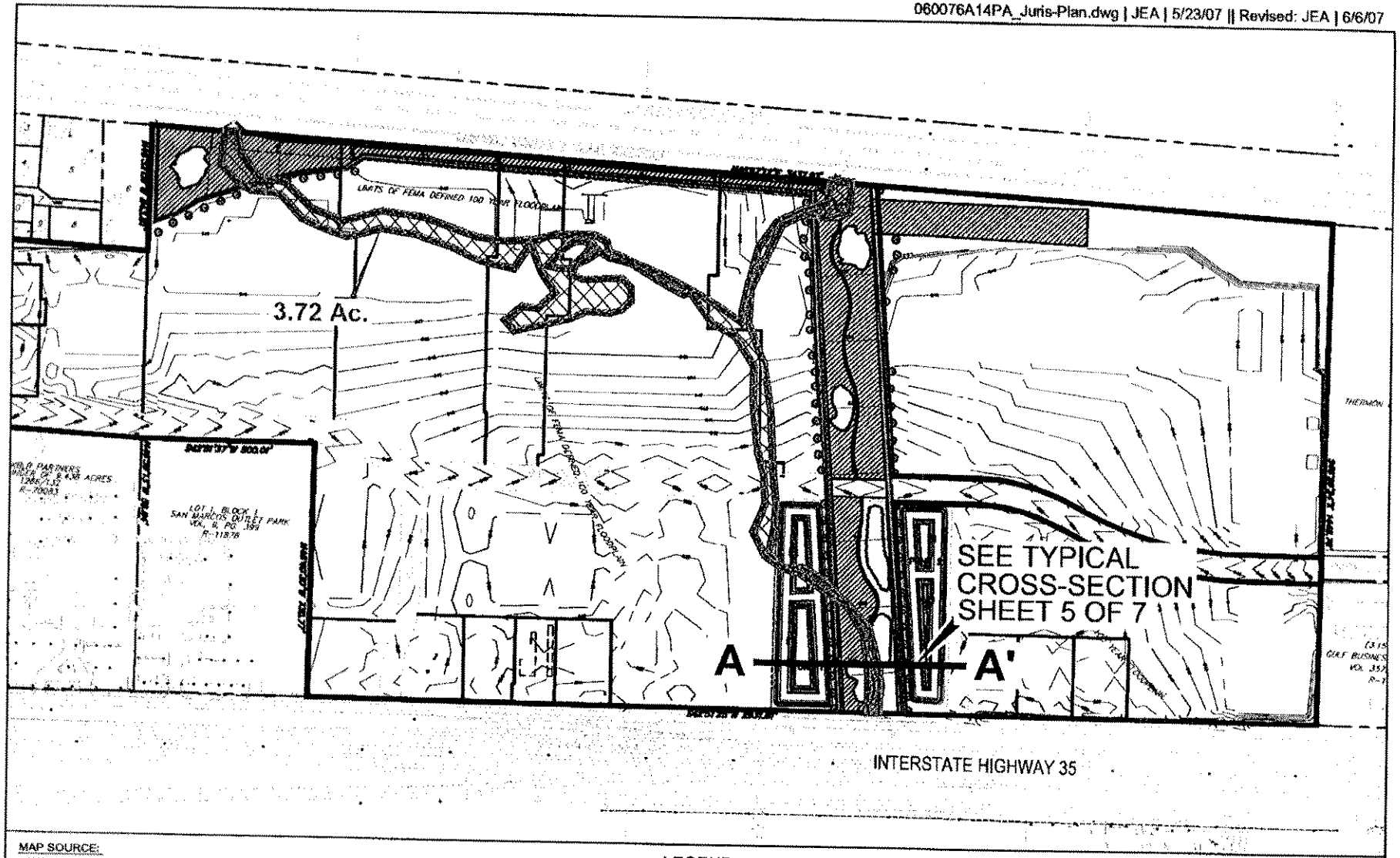
Horizon
Environmental Services, Inc.

**SHEET 2 OF 7**

WATERS OF THE U.S. INCLUDING WETLANDS
CREEKSIDE SQUARE
WITH EXISTING CONTOURS
IH 35 AND MCCARTY ROAD
SAN MARCOS, HAYS COUNTY, TEXAS
USACE PROJECT NO. 200600372 MAY 2007

"Do Not Scale This Drawing"

060076A14PA_Juris-Plan.dwg | JEA | 5/23/07 || Revised: JEA | 6/6/07




MAP SOURCE:
WETLAND SURVEY PROVIDED BY BURY+PARTNERS, INC.
(JUNE 2006)

Horizon
Environmental Services, Inc.

0 200 400
FEET

LEGEND

SITE BOUNDARY

IMPACTS TO WATERS OF THE U.S. INCLUDING WETLANDS

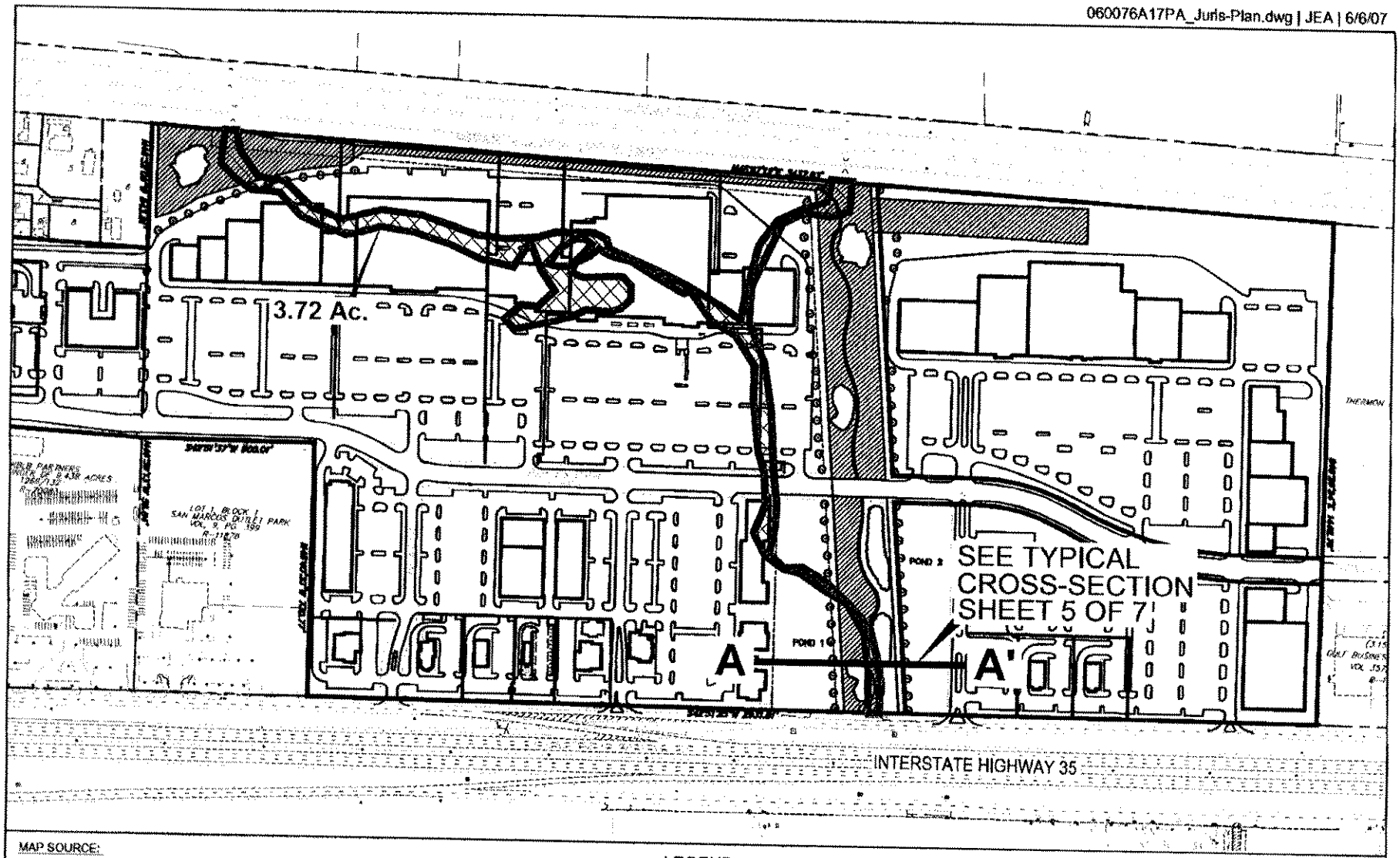
**SHEET 3 OF 7**

PROPOSED GRADING PLAN
CREEKSIDE SQUARE
IH 35 AND MCCARTY ROAD
SAN MARCOS, HAYS COUNTY, TEXAS

USACE PROJECT NO. 200600372 MAY 2007

"Do Not Scale This Drawing"

060076A17PA_Juris-Plan.dwg | JEA | 6/6/07




MAP SOURCE:
WETLAND SURVEY PROVIDED BY BURY+PARTNERS, INC.
(JUNE 2006)

LEGEND
SITE BOUNDARY
IMPACTS TO WATERS OF THE U.S. INCLUDING WETLANDS

Horizon
Environmental Services, Inc.

0 200 400
FEET

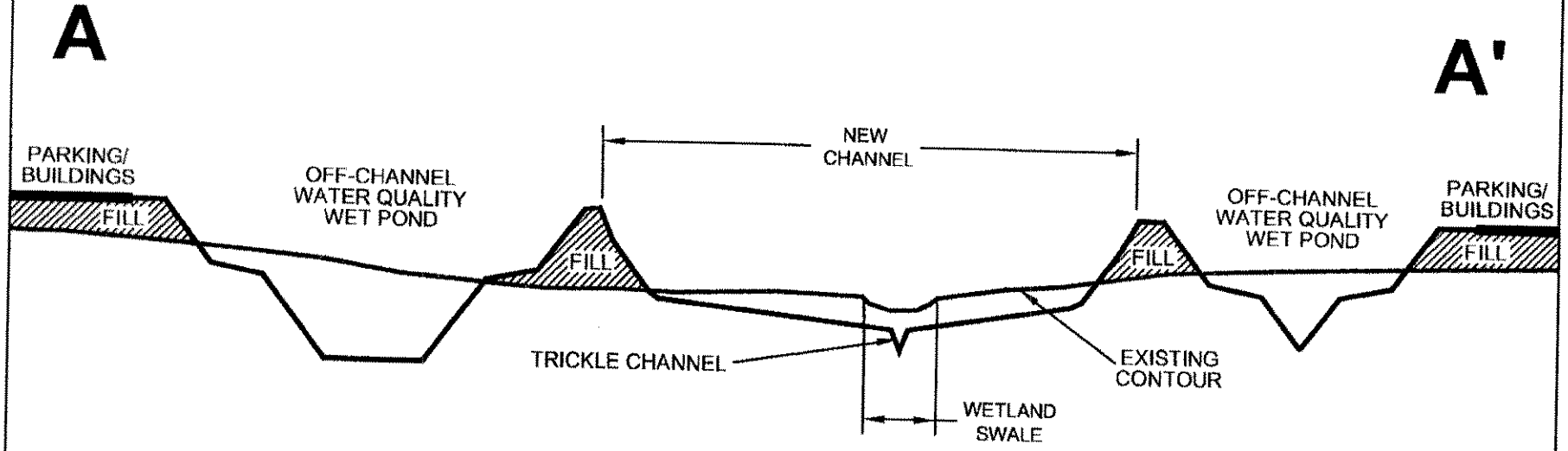
**SHEET 4 OF 7**

PROPOSED PROJECT
CREEKSIDE SQUARE
IH 35 AND MCCARTY ROAD
SAN MARCOS, HAYS COUNTY, TEXAS

USACE PROJECT NO. 200600372 MAY 2007

"Do Not Scale This Drawing"

060076A15PA_XSec.dwg | JEA | 5/24/07



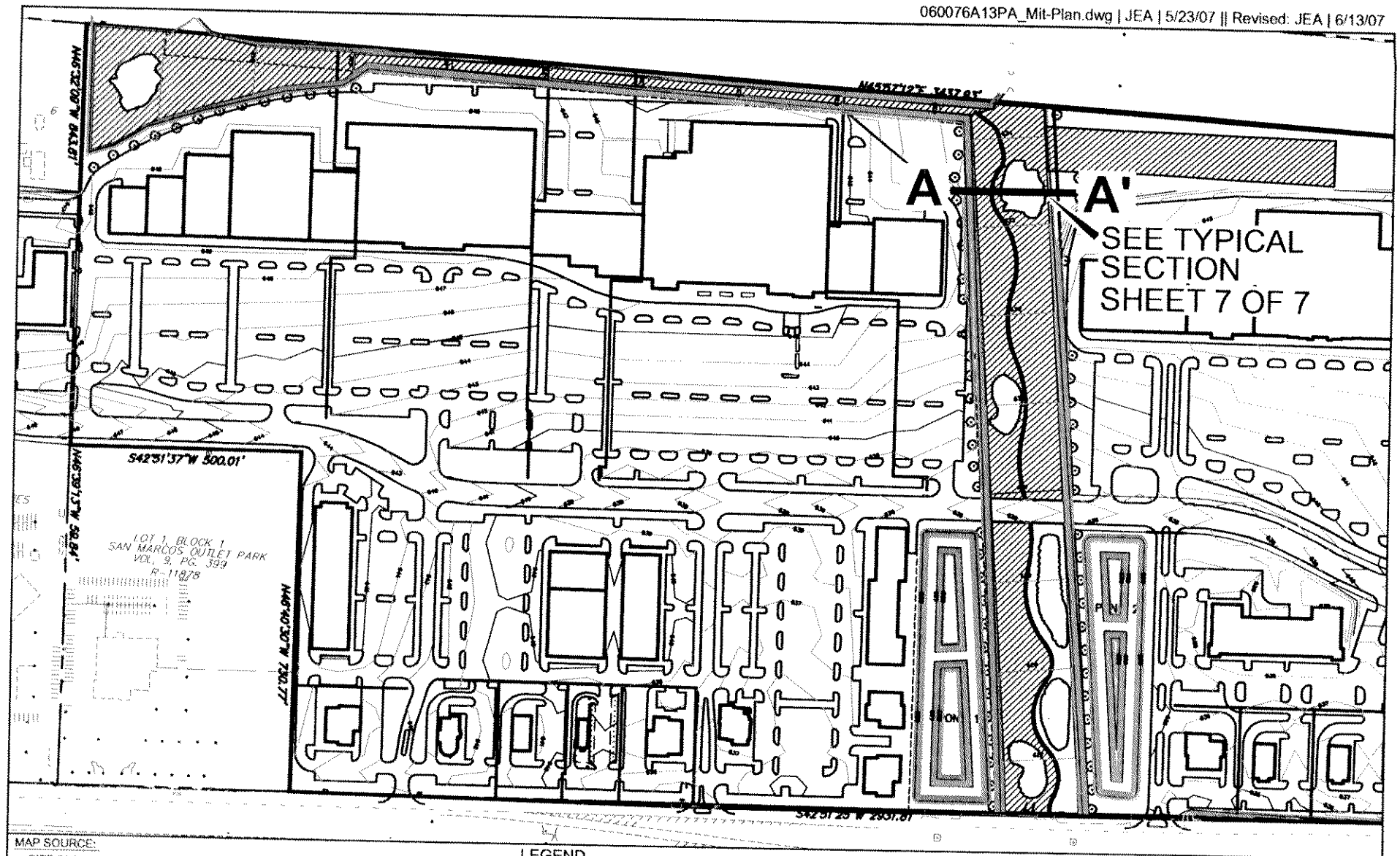

0 30 60
FEET

**SHEET 5 OF 7**

DEVELOPEMENT PLAN
TYPICAL CROSS-SECTION
CREEKSIDE SQUARE
IH 35 AND MCCARTY ROAD
SAN MARCOS, HAYS COUNTY, TEXAS
USACE PROJECT NO. 200600372 MAY 2007

"Do Not Scale This Drawing"

060076A13PA_Mit-Plan.dwg | JEA | 5/23/07 || Revised: JEA | 6/13/07




MAP SOURCE:
SITE PLAN PROVIDED BY BURY+PARTNERS, INC. (MAY 2007)

0 150 300
FEET

Horizon
Environmental Services, Inc.

LEGEND

- SITE BOUNDARY
- ENHANCED RIPARIAN CORRIDOR (8.05 AC)
- OPEN WATER WETLAND (1.14 AC)
- 5' TRICKLE CHANNEL (1614.60 LF)
- A—A' LINE OF CROSS-SECTION

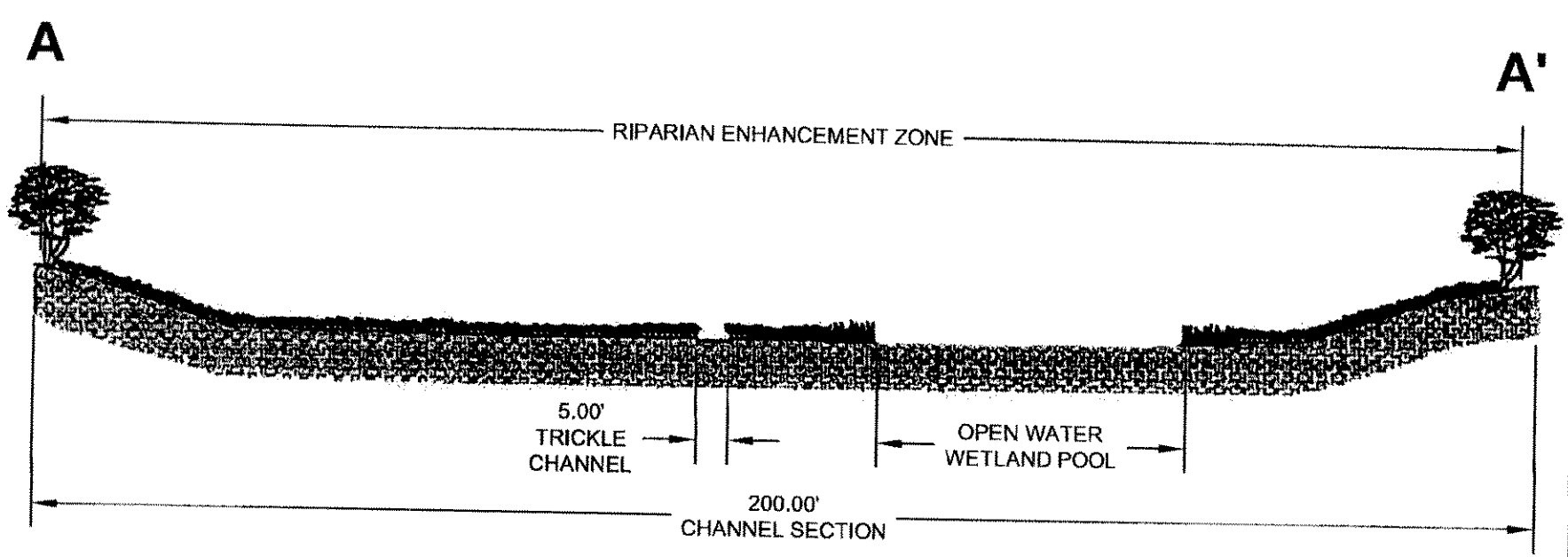
**SHEET 6 OF 7**

MITIGATION PLAN
CREEKSIDE SQUARE
IH 35 AND MCCARTY ROAD
SAN MARCOS, HAYS COUNTY, TEXAS

USACE PROJECT NO. 200600372 MAY 2007

"Do Not Scale This Drawing"

060076A11PA_Mit-Plan-XSec.dwg | JEA | 5/21/07




**NOT TO SCALE**

MAP SOURCE:
CROSS-SECTION PROVIDED BY BURY+PARTNERS, INC.
(NOVEMBER 2006)

**SHEET 7 OF 7**

MITIGATION PLAN
CROSS-SECTION A-A'
CREEKSIDE SQUARE
IH 35 AND MCCARTY ROAD
SAN MARCOS, HAYS COUNTY, TEXAS

USACE PROJECT NO. 200600372 MAY 2007

Horizon
Environmental Services, Inc.